that survived were to divide the fund thus collected. Though aimed at these policies, these statutes were held to apply to all policies that had a reserve and so to cover the type in the principal case.[10] This policy was a "preliminary term policy," on which the premiums for the first five years were very low. The plaintiff contended that though the premium was low, the net value was not less and therefore had been sufficient to buy temporary insurance to the insured's death. But the court correctly held that the amount of the reserve was based entirely on the actuarial value; so the policy had lapsed.

THE LIABILITY OF FOREIGN EXECUTORS AND ADMINISTRATORS. — The general principle is well settled that a foreign executor or administrator is not liable in his official capacity, even though he consents to be sued.[1] The language of some cases laying down this rule would indicate that a different one is somehow impossible; but it must be evident there is no more difficulty in recognizing foreign created rights against a representative than against any one else. The underlying reason for the rule appears to be that each state, to guard its own citizens, wished to administer a decedent's property within its bounds, so refused to give it to a foreign representative.[2] After this refusal it felt bound by consistency to decline to hold him. This result is unnecessary, for the right to that property claimed by him and the rights asserted against him are the creations of different laws. In refusing to allow a foreign representative to take domestic property the universal principle of the law of the *situs* determining the title and custody is followed. In declining to allow him to be sued as administrator of the property situated in the jurisdiction of his appointment, the extraordinary doctrine is applied of refusing to recognize and enforce foreign created liabilities. There would be no danger of conflict between the jurisdictions in such an action, for the law of his appointment would always determine the existence and extent of liability.[3] And many states do allow a foreign representative to be sued in cases where such a result is particularly desirable.[4] Thus when he resides in the state of suit or when he there has property of the foreign estate, a suit against him may be maintained.[5] The remedy in some of these cases is to hold the foreign representative as constructive trustee, but the trust must be based ultimately on his liability as administrator. To hold him as executor *de son tort* of the goods he received in the foreign jurisdiction is unsound, for those goods he received rightfully. The exceptional circumstances above mentioned are not everywhere essential to suit against a foreign representative. By statute in a few states a foreign executor or administrator may be sued like any non-resident.[6]

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[10] See Mutual Reserve Life Ins. Co. *v.* Roth, 122 Fed. 853.

[1] Elting *v.* First National Bank, 173 Ill. 368.

[2] See STORY, CONFLICT OF LAWS, § 512.

[3] Hoskins *v.* Sheddon, 70 Ga. 528.

[4] See Courtney *v.* Pradt, 135 Fed. 818, 823,

[5] Colbert *v.* Daniel, 32 Ala. 314; Whittaker *v.* Whittaker, 10 Lea (Tenn.) 93. *Contra*, Hedenberg *v.* Hedenberg, 46 Conn. 30. *Cf.* Falke *v.* Terry, 32 Colo. 85.

[6] GEN. STAT., KANSAS, § 3078.

And in at least two more, practically the same result has been reached without legislative aid.[7]

Liabilities assumed by an executor or administrator after taking office are primarily his personal obligations.[8] Here the law follows its usual course in recognizing foreign created rights and obligations and allows him to be sued on them wherever found.[9]

The common remedy to-day for violation of duty by an executor or administrator is a proceeding on the administration bond. In a recent case in which the right to sue on a foreign probate bond was involved, the suit was allowed, but only on the ground that the misappropriated property was in that jurisdiction. *Cutrer* v. *State of Tennessee ex rel. Leggett*, 54 So. 434 (Miss.). The chief objection to such a suit would be that it involved a determination by another court than that having charge of the estate, whether there had been a breach of duty. But the foreign law on this point can be as easily determined as on any other.[10] And as the parties are evidently bound in their personal capacity it would seem that though there were no such exceptional circumstances as in the principal case, such a suit might be maintained even under the prevailing law.[11]

APPLICATION OF PRINCIPLES OF SURETYSHIP TO BILLS AND NOTES. — Two recent decisions, indefensible under the strict law of bills and notes, raise interesting questions as to the applicability of certain principles of suretyship law. In a Pennsylvania case where a deed of trust to a third person of all of a company's property was executed to secure the anomalous indorsers[1] on a demand note made by the company, the court held that, without any prior demand on the company, these indorsers could be charged on the note, as they had become the principal debtors. *In re Alldred's Estate* (*No. 1*), 79 Atl. 141 (Pa.).[2] An indorser's liability is secondary, and can only be fixed by proper notice of dishonor.[3] But where he is, or becomes, substantially the principal debtor, it seems fair that he should no longer take refuge behind the form of his secondary liability.[4] The maker and indorser may be regarded as having exchanged positions; and such an exchange of positions is well recognized in the law of suretyship.[5]

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[7] Laughlin & McManus *v.* Solomon, 180 Pa. St. 177; Keiningham *v.* Keiningham's Ex'r, 24 Ky. L. Rep. 1330.

[8] Sheperd *v.* Young, 8 Gray (Mass.), 152.

[9] Johnson *v.* Wallis, 112 N. Y. 230.

[10] See Tunstall *v.* Pollard, 11 Leigh (Va.), 1, 28.

[11] See Johnson *v.* Jackson, 56 Ga. 326.

[1] The principal case also holds that under the Negotiable Instruments Law, §§ 63 and 64 (PA. LAWS, 1901, p. 194), an anomalous indorser is an indorser. *Accord*, Baumeister *v.* Kuntz, 53 Fla. 340. *Contra*, Mercantile Bank *v.* Busby, 120 Tenn. 652. An accommodation indorser is entitled to strict notice. French's Executrix *v.* Bank of Columbia, 4 Cranch (U. S.), 141.

[2] *Accord*, Coddington *v.* Davis, 3 Den. (N. Y.) 16; Barrett *v.* Charleston Bank, 2 McMull. (S. C.) 191. *Contra*, Creamer *v.* Perry, 17 Pick. (Mass.) 332; Selby's Admr. *v.* Brinkley, 17 S. W. 479 (Tenn.).

[3] NEGOTIABLE INSTRUMENTS LAW, § 66, cl. 2.

[4] Corney *v.* Da Costa, 1 Esp. 301; Bond *v.* Farnham, 5 Mass. 170. See Brown *v.* Maffey, 15 East 216, 223; Denny *v.* Palmer, 5 Ired. (N. C.) 610, 625.

[5] Chaplin *v.* Baker, 124 Ind. 385.